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January 31, 2008

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing
Date of Filing: September 12, 2007
Case Number: TSO-0542

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The individual is an employee of a contractor at a DOE facility. Due to concerns about the individual's past use of alcohol, the DOE local office conducted a Personnel Security Interview (PSI) with the individual on March 8, 2007. *See* DOE Exhibit 30. Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist interviewed the individual on May 9, 2007. *See* DOE Exhibit 13. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the DOE local office proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual

requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Acting Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, his supervisor and two other managers at his workplace, two of his three daughters, his wife, his Alcohol Anonymous sponsor, his therapist, and the DOE consultant psychiatrist. The DOE Counsel submitted exhibits prior to the hearing.

II. The Notification Letter and the Security Concern at Issue

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse. DOE Exhibit 1 (citing 10 C.F.R. § 710.8(h) and (j)). These statements were based on a May 15, 2007 report by the DOE consultant psychiatrist concluding that the individual suffered from "Alcohol Dependence, With Physiological Dependence, in Early Full Remission," a mental condition, which causes, or may cause, a defect in the individual's judgment or reliability. The Notification Letter also cited the following information: (1) the individual admitted himself into a 28-day inpatient alcohol treatment program; (2) he did not take a medication prescribed by his psychiatrist to stop his alcohol cravings; (3) he would hide his drinking from his family and looked forward to Saturdays because he could drink more; (4) he continued to drink despite knowing that medication he regularly takes should not be taken with alcohol; (5) he stopped consuming alcohol in 2003 but began drinking again in mid-2005; (6) in 2003, he slapped his daughter as a result of being under the influence of alcohol; (7) his wife was concerned with his alcohol consumption prior to 2003; (8) over the last few years, he drank to escape his problems; (9) his drinking did not help his relationship with his wife and took away time that would have been spent with his family; (10) between 1996 and 2007, he intentionally drank to the point of intoxication whenever he had the time.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. First, a mental condition such as Alcohol Dependence can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

III. Findings of Fact

The relevant facts in this case are not in dispute. The individual's wife testified that the individual consumed alcohol "occasionally" from 1978 to 1984, when their first daughter was born. *Id.* at 17-18. After becoming a father, "he either cut down significantly or stopped" drinking. *Id.* at 18. In 1987, the couple learned that their daughter, then three years old, had been sexually abused by a babysitter. *Id.* at 19-20. After this, the individual's wife saw the individual become depressed, and his drinking intensified "a great deal." *Id.* at 21. In 1996, the daughter who had been abused, by then the oldest of three daughters, was diagnosed with anorexia, and the individual's wife believes this contributed to the individual drinking more. *Id.* at 22-23. In 2003, according to the history taken by the DOE psychiatrist and recounted in her report, the individual got into an argument with his oldest daughter and slapped her. He had consumed alcohol prior to the argument, and believing the incident would not have happened but for his drinking, he resolved to quit. DOE Exhibit 13 at 7.

His wife testified that, in 2003 while at a treatment center for their daughter's anorexia, "the people there really, really encouraged him to get support and to get in an AA group, but he's a good . . . John Wayne type, and he was going to tough it out and do it on his own." Hearing Transcript [hereinafter Tr.] at 26. However, in the middle of 2005, while he was on a trip with friends, the individual drank one beer, believing it would not hurt to drink just one. DOE Exhibit 13 at 7. He then began drinking regularly, though he attempted to hide this from his family until later in 2005, when his youngest daughter came home and found him drinking a beer. *Id.*; Tr. at 122-23. His pattern of drinking progressed to the point where he would drink three to four times per week, three to four drinks each time, and more on weekends. DOE Exhibit 13 at 7; Tr. at 155. The individual's drinking began to take a toll on his relationships with his wife and daughters, Tr. at 28-29, 123-24, as it had when he had used alcohol prior to quitting in 2003. *Id.* at 105. The individual's oldest daughter was away at college in the fall of 2006 and his wife testified that when "she came home at Thanksgiving, and she was very worried about his -- you know, she could just see his physical deterioration from when she had left in August and come back in November." *Id.* at 29. While the daughter was home for Christmas in 2006, she and her mother visited with the daughter's therapist, "told her what was happening, and she decided -- you know, we really knew that we needed an intervention, and [the therapist] was definitely behind us with that." *Id.* at 31.

The family scheduled an appointment with the daughter's therapist for February 3, 2007. At the appointment, the individual's wife and daughters expressed to him their feelings about how his drinking was affecting their family. *Id.* at 31. Each of them read letters to him that they had prepared for the intervention. *Id.* at 134-35. The individual was at first reluctant to get treatment, primarily because of the impact he believed it would have on his job. *Id.* at 33, 107. However, he eventually agreed to check into an inpatient treatment facility located about two hours away from his town, where he spent the next month. *Id.* at 35-36.

IV. Analysis

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization, as well as the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concerns in this case remain unresolved.

A. Regulatory Standard

A hearing under Part 710 is held “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization,” i.e., “to have the substantial doubt regarding eligibility for access authorization resolved.” 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710 regulations, the Hearing Officer is directed to make a predictive assessment as to whether granting or restoring access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a).

It is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

“In resolving a question concerning an individual's eligibility for access authorization,” I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c). Considering all of the above factors, I find that the nature, extent, and seriousness of the conduct, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the recency of the conduct, and the likelihood of recurrence are the most relevant factors in this case, with the last being the critical issue in this case.

B. The Diagnosis of Alcohol Dependence

It is undisputed that the individual suffers from Alcohol Dependence under the criteria set forth in the DSM-IV-TR. Both the DOE psychiatrist and the individual's therapist are in accord on

this matter. Tr. at 60. From the history described above, the individual's problem is one that is both serious and long-standing. In this respect, I concur with the impression of the DOE psychiatrist, who remarked that the hearing testimony gave her "a clearer picture of the severity and length of time that [the individual] had been struggling with the disease of alcohol dependence." Tr. at 157.

C. Whether the Security Concern Raised by the Diagnosis of Alcohol Dependence Has Been Resolved

1. Testimony Regarding the Steps Taken by the Individual toward Rehabilitation and Reformation from Alcohol Dependence

The individual has taken many positive steps toward rehabilitation and reformation. First, the individual voluntarily undertook a month of intensive inpatient treatment for his disease, knowing that by doing so he put his clearance and employment at risk. *Id.* at 135-37. Since coming back home from treatment, he has been seeing a therapist on a regular basis, *Id.* at 69 (testimony of therapist that she has seen the individual on average once every three weeks), including sessions with his family. *Id.* at 37-38.

Second, the individual began attending Alcoholics Anonymous (AA) sessions while in inpatient treatment, and has continued to do so consistently since. *Id.* at 78-79 (testimony of AA sponsor that "my perception is that he goes to at least three meetings or more a week. One of the things that impresses me about [the individual] is his consistency in attendance. That speaks well of why he's got nine months of sobriety.") According to his sponsor, the individual is highly motivated, listens carefully at meetings, and that he "appreciates AA, because he knows that AA has given him the opportunity for a new life, and he's taken advantage of it. . . . [H]e has been the most consistent with me of any of the people I'm sponsoring right now." *Id.* at 81-85.

Finally, there was universal agreement among the witnesses at the hearing that the individual has remained sober since February 3, 2007, and that he is committed to maintaining his sobriety. *See, e.g., Id.* at 51 (testimony of wife that "he truly believes that he can never have another drink of alcohol as long as he lives"); *Id.* at 89 (testimony of AA sponsor that the individual is "going to stick with" AA); *Id.* at 127 (opinion of daughter that "just going through all that, and it jeopardizing all his relationships with his family, his friends, work, that he's not going to take that risk. I mean, I know it is an addiction and anybody can relapse, but I don't think he's going to do it."). To his credit, the individual clearly recognizes that he suffers from alcohol dependence, and acknowledges the security concern in this case. Tr. at 133.

2. Expert Testimony as to the Individual's Progress in Recovery and the Risk of Relapse

The regulatory factors discussed above, both as to the severity of the individual's problem and the steps that the individual has taken thus far to overcome his problem, need to be taken into account in evaluating the "likelihood of recurrence," in this case the likelihood that the

individual will return to using alcohol in the future. While the lay witnesses at the hearing strongly and, in my opinion, sincerely believe that the individual will not return to drinking, I give more weight on this issue to the opinions of the two experts who testified at the hearing, the individual's therapist and the DOE psychiatrist.

a. The Testimony of the Individual's Therapist

The individual's therapist is a licensed marriage and family therapist, a licensed chemical dependency counselor and a certified intervention specialist who has practiced since 1996. *Id.* at 56. She knows the individual's family well, having worked with them on his daughter's issues with anorexia for a number of years. *Id.* at 57-58. As noted above, she has seen the individual, on average, three times per month since he returned from inpatient treatment in March 2007. She opined that the individual is "probably just exactly . . . where he should be in his recovery," *Id.* at 66, noting his continued attendance at AA, which she considers "the gold standard for recovery from alcoholism." *Id.* at 65. As for the likelihood of the individual's relapse, the therapist testified that "if he keeps doing what he is doing, I think that he has a good prognosis to retain his recovery" *Id.* at 67, and the risk of future relapse would be "low." *Id.* at 73. The therapist believes that "there is a very good chance that he will" continue with the program that he has been following,

because this family is a family that has utilized therapy to a very full extent, and unlike some -- unlike some families, I think that they are saying they are seeing the benefits and they are willing to work to gain that.

So I feel like he has -- he has good motivation to continue in a positive direction.

Id. at 74.

b. The Testimony of the DOE Psychiatrist

The DOE psychiatrist was not as optimistic in her prognosis. While all of the witnesses testified as to the individual's strong motivation to remain abstinent, and the DOE psychiatrist thought the "witnesses all looked and sounded credible," *Id.* at 157, she testified that

studies show, actually, believe it or not, that it is not the motivation that keeps people sober for a long time, that it is actually the frequency and the length of time of attendance, for example, at AA, and all of those other treatment programs, that keeps their prognosis -- their long-term prognosis much more solid.

Id. at 160-61.

The DOE psychiatrist stated that the individual's motivation is reinforced by what she described as a very intelligent and very supportive family, and tools he has gained since going into treatment. *Id.* at 161, 162. However, while taking "into consideration all the positive things that

are going for him with regards to his recovery,” the DOE psychiatrist noted “the observations we have in this field . . . that the first year is the highest vulnerability” and “up to 60 percent of people” relapse in the first year. “So while he is definitely on the road to recovery . . . at this time, I’m sorry to say that he has not, in my opinion, met the adequate rehabilitation and reformation that I think is required to really lower the risk of relapse of this disease of alcoholism.” *Id.* at 162-63. “At this point in time, I would still consider the probability of relapse as moderate instead of low.” *Id.* at 202.

D. Hearing Officer Evaluation of Evidence

As noted above, the decision of a Hearing Officer in a Part 710 case is a predictive assessment, in this case an assessment of the likelihood that the individual will relapse from abstinence from alcohol, the potential consequences to national security of such a relapse not being in dispute. In this regard, I found the testimony of the DOE psychiatrist to be well-founded and persuasive, and I am convinced that the prognosis for the individual was, as of the date of the hearing in this matter, more guarded than that offered by the individual’s therapist.

Like the DOE psychiatrist, I was struck by the individual’s testimony that his urge to drink was “not so frequent anymore. Maybe once a day, you know, and then it doesn’t last very long.” *Id.* at 143. The DOE psychiatrist cited this testimony in characterizing the individual as “still very fragile,” while acknowledging that this “sounds like a punishment for somebody being honest, . . .” *Id.* at 161. She noted that such continued urges in an individual nine months into sobriety “is not a symptom that is universally present in alcohol dependence. . . . There are many people with alcohol dependence who actually, remarkably, have an easier time of not even thinking about it, even with triggers, because that is just not a predominant symptom that they have.” *Id.* at 187.

Taking all of the above into account, I am of the opinion that the risk of relapse for the individual is at this point too great to warrant restoration of his access authorization. More than anything else, this is a factor of the amount of time that the individual had been abstinent and in treatment at the time of the hearing. Another consideration is the fact that the individual attempted to quit drinking before, but then relapsed after two years. However, the individual’s present approach, with the superb support being offered by his family and therapist, and his continued participation in AA, almost certainly improves his chances of maintaining his recovery. Thus, I believe that the individual could have, with a longer period of abstinence at the time of the hearing, sufficiently resolved the security concerns in this case.

V. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a substantial doubt regarding the individual’s eligibility for access authorization. In addition, I find that the concern raised by that evidence had not been sufficiently mitigated as of the date of the hearing in this matter. I therefore cannot conclude, “after consideration of all the relevant information,

favorable and unfavorable,” that restoring the individual’s “access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. §§ 710.7(a), 710.27(a). The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: January 31, 2008